

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 38/MP/2016

- Subject : Petition under Section 79 (1) (c) read with 79 (1) (f) and 79 (1) (k) of the Electricity Act, 2003 *inter-alia* seeking a declaration that the factor/events, namely, delay in forest clearance of land for main plant, cancellation of allocated coal block to the petitioner, non signing of Fuel Supply Agreement, delay in acquisition/procurement of land for main plant, delay in approval of land for ash Pond by State of Odisha, delay in clearance of railway line from Eastern Coast Railway, Odisha, delay in clearance for construction of dedicated transmission line from Ministry of power in construction of dedicated transmission line from Ministry of Power in the construction of the 2X660 MW coal based Thermal Power plant located in Dhenkenkenal District Odisha as force majeure events under BPTA dated 24.2.2010, seeking extension of time period for achieving the commercial operation date of project and other consequential reliefs under the BPTA dated 24.2.2010.
- Date of hearing : 12.4.2016
- Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
- Petitioner : Lanco Badandh Power Limited
- Respondent : Power Grid Corporation of India Limited and others
- Parties present : Shri Sanjay Sen, Senior Advocate, LBPL
Shri Deepak Khurana, Advocate, LBPL
Shri Vikas Mishra, Advocate, LBPL

Record of Proceedings

Learned senior counsel for the petitioner submitted that the present petition has been filed seeking declaration that factors enumerated in the petition as force majeure events under clause 9 of the BPTA and extension of time for achieving COD of the project. Learned senior counsel for the petitioner further submitted as under:

- (a) The petitioner is setting up a 2 x 660 MW Coal based Thermal Power Plant (project) at village Kharagprasad/Kurunti in Dhenkanal District, Odisha. On 24.2.2010, the petitioner entered into BPTA with PGCIL for 1600 MW, which was subsequently revised to 800 MW.

(b) As per the BPTA, the scheduled date of commissioning of Unit 1 and Unit 2 was December 2013 and April 2014 ('COD') respectively subject to other terms and conditions of the BPTA.

(c) Due to delay in forest clearance, delay in acquisition of land and delay in approval of Ash pond land, etc., the project could not achieve COD within the timeline given in the BPTA.

(d) The delay in the achieving COD as per the BPTA cannot be attributed to the petitioner in any manner whatsoever. Accordingly, the petitioner is neither liable to open the LC nor liable to furnish the bank guarantee in terms of clause 2 (d) of the BPTA. However, PGCIL`s vide its letters dated 8.7.2014 and 2.2.2015 directed the petitioner to pay the transmission charges.

2. In response to the Commission`s query regarding notice for force majeure events, learned senior counsel for the petitioner submitted that notice for force majeure under clause 9 of the BPTA was given to PGCIL on 6.5.2014 and 8.7.2014.

3. After hearing the learned senior counsel for the petitioner, the Commission admitted the petition and directed to issue notice to the respondent.

4 The Commission directed the petitioner to serve copy of the petition on the respondent by 21.4.2016. The respondent was directed to file its reply, on affidavit, by 9.5.2016 with an advance copy to the petitioner, who may file its rejoinder, if any, on or before 19.5.2016. The Commission directed that due date of filing the reply and rejoinder should be strictly complied with. No extension shall be granted on that account.

5. The petition shall be listed for hearing on 26.5.2016.

By order of the Commission

**Sd/-
(T. Rout)
Chief (Law)**